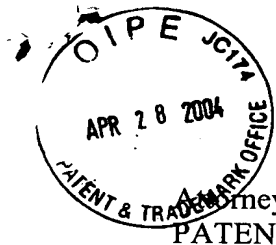


APR 28 2004

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Attorney Docket No. 31735/70009
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael R. DUFF et al. Conf. No.: 8141
Serial No.: 10/645,844 Art Unit: Not yet assigned
Filed: August 22, 2003 Examiner: Not yet assigned
For: METHOD AND APPARATUS FOR DECREASING THE
DROWSINESS OF AN INDIVIDUAL

ELECTION WITH TRAVERSE

Honorable Commissioner for
Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the restriction requirement mailed April 16, 2004. Claim 43 (Group III) is elected and the requirement is traversed for the reasons that follow.

The office action states (beginning at paragraph No. 2) that “[i]nventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects....”

Regarding whether the inventions are not disclosed as capable of use together, the office action states “[i]n the instant case the different inventions are disclosed as capable of use separately”. The office action does not refer to any basis for this conclusion and this is not correct, the different inventions are not disclosed as capable of use separately.

Regarding whether the inventions have different modes of operation, different functions, or different effects, the office action states “the method of Group I does not require any of ammonia containing substance of Groups II or the specific liquid stimulating organic agents of III, and it can use any other stimulating agent such as perfumes. Invention II requires ammonia containing substance only; and invention III requires both ammonia containing substance and liquid stimulating organic substance.”

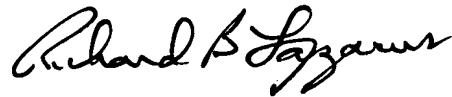
The quoted reasoning does not demonstrate different modes of operation, different functions, or different effects. The use of specific material in group II is encompassed by the range of materials set forth in Group I. The use of specific material in group III is encompassed by the range of materials set forth in Group II. Specifying a material in one group but not in another group does not indicate the groups have a different mode, function or effect. For at least these reasons, the second required criteria is not met.

Accordingly, neither of the two stated required restriction criteria are met and the restriction should be withdrawn and action on the merits of all claims should proceed.

The examiner is invited to telephone the undersigned to discuss any issue(s) which prevent the application from being passed to issue or to discuss the differences between the claims and the prior art.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and that shortages in fees, if any, be charged, or any overpayment in fees credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (31735/70009).

Respectfully submitted,
BARNES & THORNBURG



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